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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15

16 UNITED STATES OF AMERICA,
17 Plaintiff,
18 v.
19 TOBY SCAMMELL,
20 Defendant.
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CASE NO.: 2:13-cr-0733

**NOTICE OF DEFENDANT
TOBY G. SCAMMELL'S
MOTION TO DISMISS
INDICTMENT**

**Date: Monday, April 14, 2014
Time: 10:00 a.m.
Judge: Hon. S. James Otero
Room: 1-Second Floor**

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE
2 TAKE NOTICE that on April 14, 2014 at 10 a.m., before the Honorable S. James
3 Otero, located at Courtroom 1, 312 N. Spring Street, Second Floor, Los Angeles,
4 California 90012, defendant Toby G. Scammell will and hereby does move for an
5 order dismissing the criminal indictment returned against him in this matter on
6 October 8, 2013. The indictment should be dismissed for the following reasons:
7 (1) it fails to adequately allege a fiduciary relationship existed between Mr.
8 Scammell and his girlfriend; (2) the prosecutor incorrectly instructed the grand jury
9 on the nature of duty required; (3) the anti-fraud statutes charged would be
10 unconstitutional if extended to the merely romantic relationship the indictment
11 alleges; (4) it improperly relies on an allegation that information that is immaterial
12 as a matter of law was material; (5) it is insufficiently specific; and (6) it was
13 brought in retaliation for Mr. Scammell's constitutionally protected criticism of the
14 government. This motion is supported by this Notice, Memorandum of Points and
15 Authorities in Support of the Motion, and the Declaration of Leo P. Cunningham
16 and accompanying exhibits. This motion is made following the conference of
17 counsel pursuant to L.R. 7-3, which took place on December 30, 2013 and
18 February 13, 2014.

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21 Dated: March 17, 2014

By: /s/ Leo P. Cunningham

Leo P. Cunningham

Charlene Koski

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24 Attorneys for Defendant

Toby G. Scammell